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SEP - 8 2005

In re Application of:
MICHAEL YOUNG ET AL.
Serial No.: 10/807,237
Filed: 24 March 2004
Docket: 151877
Title: SYSTEM AND METHOD FOR A CRADLE-TO-
GRAVE SOLUTION FOR INVESTIGATION AND
CLEANUP OF HAZARDOUS IMPACTED
PROPERTY AND ENVIRONMENTAL MEDIA

DECISION ON PETITION
TO MAKE SPECIAL
(COUNTERING TERRORISM)

This is a decision on the petition filed on July 7, 2005, to make the above-identified application special under the accelerated examination procedure set forth in MPEP § 708.02(XI) in accordance with 37 CFR § 1.102 (2004).

The petition to make the application special is **DISMISSED**.

The petition being based upon countering terrorism, the applicable rule is 37 CFR 1.102(c). Under 1.102(c), no fee is required, but a statement explaining how the invention materially contributes to countering terrorism is necessary.

In the USPTO's final rule amending 37 CFR 1.102 to eliminate the fee requirement for petitions to make special, the following standard was set for determining whether a invention qualified as "materially...countering terrorism":

The materiality standard does not permit an applicant to speculate as to how a hypothetical end-user might specially apply the invention in a manner that could counter terrorism. Nor does such standard permit an applicant to enjoy the benefit of advanced examination merely because some minor aspect of the claimed invention may be directed to countering terrorism...

Applicants are reminded that any identification of a basis for requesting special status and a statement of compliance with the technology specific

requirement for special status must be based upon a good faith belief that the invention in fact qualifies for special status. see §§ 1.56 and 10.18...

Comment 65: The Office has received internal comments expressing concern that some applicants may view the lack of a petition fee as an inducement to file petitions where the nexus between the invention and the countering of terrorism is "strained."

Response: The comment has been adopted in part. The discussion of the rule amendment has focused on the need for applicants to recognize the "material" aspect of the claimed invention's relationship to countering terrorism, which will be further addressed in an MPEP revision. In view of such discussion, applicants should not expect to have their petitions granted without a clear demonstration that the claimed invention is materially related to countering terrorism.

69 Fed. Reg. 56382, 56511 (Sept. 21, 2004).

Applicant's statement alleged that the invention concerned improved monitoring of areas which may be affected by terrorist acts.

Applicant's claims are directed towards a method for monitoring contaminant increase at sensor sites, analyzing the data, and reporting the data. While the invention is principally directed towards monitoring escape of hazardous material from waste sites, one embodiment is included in which harmful agents are sought to be detected and, when exceeding the regulatory standards, reported (e.g., page 56 of the instant specification). Applying the standards evidenced in the administrative history of the Rule, the invention appears to be principally directed towards a sensor system for hazardous materials integrated with a reporting system. The main benefit appears to be monitoring areas for hazardous materials, and alerting an operator when concentrations are exceeded.

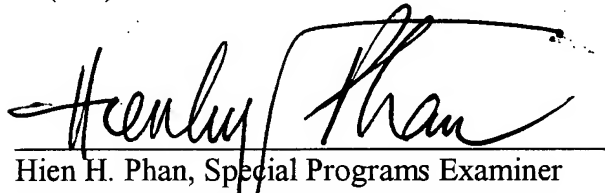
The sole counter-terrorism aspect appears to consist only of the ability to sense terrorism-specific breaches of a water supply and report such breaches to a controlling authority. However, applicants do not particularly claim any improvement in discerning terrorism-resultant detection events from non-terrorism detection events. For instance, applicant's method does not distinguish between a naturally caused increase in a specific contaminant, and a purposefully and maliciously caused increase in a specific contaminant. This is supported by the general thrust of the invention towards environmental waste sites. The use of currently available regulatory standards as the thresholds for warning indication indicates that no improvement in targeting terrorism-related causes of contamination is contemplated by the instant invention.

Furthermore, the reporting system does not particularly claim any improvement in targeting terrorism-related water fouling warnings to a controlling authority. Applicant's system merely provides a reporting means such as a computer connected to a telecommunication system. While such data may be used by a government agency to find trends in ambient contamination levels (page 56), the same could be said for any generic monitoring system.

The counter-terrorism aspect of this invention appears to be tangential rather than material. Classifying this invention as an anti-terrorism device does not rise to the level of materiality intended by the Rules. In order for the Office to concentrate its resources on inventions which will materially counter terrorist activities, inventions not possessing a direct impact on such activities will not be made special.

This application will therefore be taken up by the examiner for action in its regular turn.

Any inquiry regarding this decision should be directed to Hien Phan, Special Program Examiner, at (571) 272-1606.

A handwritten signature in black ink, appearing to read "Hien H. Phan", is written over a horizontal line.

Hien H. Phan, Special Programs Examiner
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